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19
20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **WESTERN DIVISION**

23 Lexington Luminance LLC,
24 Plaintiff,
25
26 v.
27 Feit Electric Company, Inc.,
28 Defendant.

29 Case No. 2:18-cv-10513-PSG-KS
30 Hon. Philip S. Gutierrez
31
32 STIPULATED PROTECTIVE ORDER

33
34 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties'
35 Stipulated Protective Order ("Stipulation") filed on October 28, 2019, the terms of the
36 protective order to which the parties have agreed are adopted as a protective order of this
37 Court (which generally shall govern the pretrial phase of this action) except to the extent, as
38 set forth below, that those terms have been modified by the Court's amendment of
39 paragraphs 6.1, 6.2, 7.2, and 15 of the Stipulation.

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1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND MODIFIED BY**
2 **THE COURT¹**

5 1. **A. PURPOSES AND LIMITATIONS**

6 Disclosure and discovery activity in this action are likely to involve production of
7 confidential, proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
9 This Order does not confer blanket protections on all disclosures or responses to discovery and
10 the protection it affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal principles. As set forth
12 in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
14 the standards that will be applied when a party seeks permission from the court to file material
15 under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists and other valuable
18 research, development, commercial, financial, technical and/or proprietary information for which
19 special protection from public disclosure and from use for any purpose other than prosecution of
20 this action is warranted. Such confidential and proprietary materials and information consist of,
21 among other things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or commercial
23 information (including information implicating privacy rights of third parties), information
24 otherwise generally unavailable to the public, or which may be privileged or otherwise protected
25 from disclosure under state or federal statutes, court rules, case decisions, or common law.

27 28 ¹ The Court's additions to the agreed terms of the Protective Order are generally indicated in bold
 typeface, and the Court's deletions are indicated by lines through the text being deleted.

1 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes
2 over confidentiality of discovery materials, to adequately protect information the parties are
3 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of
4 such material in preparation for and in the conduct of trial, to address their handling at the end of
5 the litigation, and serve the ends of justice, a protective order for such information is justified in
6 this matter. It is the intent of the parties that information will not be designated as confidential for
7 tactical reasons and that nothing be so designated without a good faith belief that it has been
8 maintained in a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
14 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
15 of Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
17 well as their support staff).

18 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

20 2.5 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other things,
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
26 responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
28 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or

1 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
2 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
3 or of a Party's competitor.

4 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
5 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
6 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
7 less restrictive means.

8 2.9 House Counsel: attorneys who are employees of a party to this action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
13 action but are retained to represent or advise a party to this action and have appeared in this action
14 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

15 2.12 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

17 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
18 Material in this action.

19 2.14 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
21 organizing, storing, or retrieving data in any form or medium) and their employees and
22 subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

25 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
26 Producing Party.

27 2.17 Technical Proprietary Information: proprietary information involving LED
28 fabrication that is not ascertainable from public sources.

1 3. SCOPE

2 The protections conferred by this Order cover not only Protected Material (as defined
3 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
4 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
5 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
6 protections conferred by this Order do not cover the following information: (a) any information
7 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
8 public domain after its disclosure to a Receiving Party as a result of publication not involving a
9 violation of this Order, including becoming part of the public record through trial or otherwise;
10 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
11 Receiving Party after the disclosure from a source who obtained the information lawfully and
12 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
13 trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by
16 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
17 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
18 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
19 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
20 including the time limits for filing any motions or applications for extension of time pursuant to
21 applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
24 or Non-Party that designates information or items for protection under this Order must take care
25 to limit any such designation to specific material that qualifies under the appropriate standards.
26 To the extent it is practical to do so, the Designating Party must designate for protection only
27 those parts of material, documents, items, or oral or written communications that qualify – so that
28

1 other portions of the material, documents, items, or communications for which protection is not
2 warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or retard the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated
8 for protection do not qualify for protection at all or do not qualify for the level of protection
9 initially asserted, that Designating Party must promptly notify all other Parties that it is
10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
18 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
19 EYES ONLY" to each page that contains protected material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
22 each portion, the level of protection being asserted.

23 A Party or Non-Party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated which
25 material it would like copied and produced. During the inspection and before the designation, all
26 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or portions thereof,

1 qualify for protection under this Order. Then, before producing the specified documents, the
2 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
4 Material. If only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins) and must specify, for each portion, the level of protection being
7 asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
9 Designating Party identify on the record, before the close of the deposition, hearing, or other
10 proceeding, all protected testimony and specify the level of protection being asserted. When it is
11 impractical to identify separately each portion of testimony that is entitled to protection and it
12 appears that substantial portions of the testimony may qualify for protection, the Designating
13 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
14 a right to have up to 21 days to identify the specific portions of the testimony as to which
15 protection is sought and to specify the level of protection being asserted. Only those portions of
16 the testimony that are appropriately designated for protection within the 21 days shall be covered
17 by the provisions of this Protective Order. Alternatively, a Designating Party may specify, at the
18 deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript
19 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY.”

21 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,
22 or other proceeding to include Protected Material so that the other parties can ensure that only
23 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on the title page
28 that the transcript contains Protected Material, and the title page shall be followed by a list of all
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1 pages (including line numbers as appropriate) that have been designated as Protected Material and
2 the level of protection being asserted by the Designating Party. The Designating Party shall
3 inform the court reporter of these requirements. Any transcript that is prepared before the
4 expiration of a 21-day period for designation shall be treated during that period as if it had been
5 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
6 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
7 actually designated.

8 (c) for information produced in some form other than documentary and for any other
9 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
10 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
12 the information or item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the Designating Party’s
16 right to secure protection under this Order for such material. Upon timely correction of a
17 designation, the Receiving Party must make reasonable efforts to assure that the material is
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
21 confidentiality at any time **that is consistent with the Court’s scheduling order**. Unless a
22 prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid
23 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
24 delay of the litigation, a Party does not waive its right to challenge a confidentiality designation
25 by electing not to mount a challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process **under Local Rule 37.1 et seq.**, by providing written notice of each designation it is
28 challenging and describing the basis for each challenge. To avoid ambiguity as to whether a

1 challenge has been made, the written notice must recite that the challenge to confidentiality is
2 being made in accordance with this specific paragraph of the Protective Order. The parties shall
3 attempt to resolve each challenge in good faith and must begin the process by conferring directly
4 (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of
5 the date of service of notice. In conferring, the Challenging Party must explain the basis for its
6 belief that the confidentiality designation was not proper and must give the Designating Party an
7 opportunity to review the designated material, to reconsider the circumstances, and, if no change
8 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
9 may proceed to the next stage of the challenge process only if it has engaged in this meet and
10 confer process first or establishes that the Designating Party is unwilling to participate in the meet
11 and confer process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
14 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
15 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
16 process will not resolve their dispute, whichever is earlier. Each such motion must be
17 accompanied by a competent declaration affirming that the movant has complied with the meet
18 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
19 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
20 shall automatically waive the confidentiality designation for each challenged designation. In
21 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
22 time if there is good cause for doing so, including a challenge to the designation of a deposition
23 transcript or any portions thereof. Any motion brought pursuant to this provision must be
24 accompanied by a competent declaration affirming that the movant has complied with the meet
25 and confer requirements imposed by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
28 unnecessary expenses and burdens on other parties) may expose the Challenging Party to

1 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
2 file a motion to retain confidentiality as described above, all parties shall continue to afford the
3 material in question the level of protection to which it is entitled under the Producing Party's
4 designation until the court rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
9 the categories of persons and under the conditions described in this Order. When the litigation has
10 been terminated, a Receiving Party must comply with the provisions of Section 14 below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and
13 in a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
19 information for this litigation;

20 (b) the officers, directors, and employees (including House Counsel) of the Receiving
21 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
24 reasonably necessary for this litigation and who have signed the “Acknowledgment and
25 Agreement to Be Bound” (Exhibit A) and the Expert's support staff;

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, **mock jurors**,
28 and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who Counsel of Record taking the deposition has a reasonable belief that the witness had access to the Protected Material prior to the deposition, unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4(a), below, have been followed (and the Expert’s support staff if subparts (1)-(3) have been satisfied for that Expert);

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation; and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to Section 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the
2 reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the
3 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
4 In addition, any such motion must be accompanied by a competent declaration describing the
5 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
6 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
7 to approve the disclosure.

8 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
9 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
10 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

11 8. **PROSECUTION BAR**

12 Absent written consent from the Producing Party, any individual who receives
13 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Technical Proprietary
14 Information shall not be involved in the prosecution of patents or patent applications relating to
15 LED fabrication, the subject matter of this action, including without limitation the patent asserted
16 in this action and any patent or application claiming priority to or otherwise related to the patent
17 asserted in this action, before any foreign or domestic agency, including the United States Patent
18 and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution"
19 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
20 maintenance of patent claims.² To avoid any doubt, "prosecution" as used in this paragraph does
21 not include representing a party challenging or defending a patent before a domestic or foreign
22 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
23 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY" information is first received by the affected individual and shall
25 end one (1) year after final termination of this action.

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2 Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this Protective Order. Such notification shall include a copy of this Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 Designating Party whose Protected Material may be affected.³

13 If the Designating Party timely seeks a protective order, the Party served with the
14 subpoena or court order shall not produce any information designated in this action as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
16 determination by the court from which the subpoena or order issued, unless the Party has obtained
17 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
18 seeking protection in that court of its confidential material – and nothing in these provisions
19 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a
20 lawful directive from another court.

21 10. A NON-PARTY’S PROTECTED MATERIAL
22 SOUGHT TO BE PRODUCED IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-Party in
24 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
 its confidentiality interests in the court from which the subpoena or order issued.

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a
4 Non-Party's confidential information in its possession, and the Party is subject to an agreement
5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 1. promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement with a Non-
8 Party;

9 2. promptly provide the Non-Party with a copy of the Protective Order in this
10 litigation, the relevant discovery request(s), and a reasonably specific description of the
11 information requested; and

12 3. make the information requested available for inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court within 14
14 days of receiving the notice and accompanying information, the Receiving Party may produce the
15 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
16 seeks a protective order, the Receiving Party shall not produce any information in its possession
17 or control that is subject to the confidentiality agreement with the Non-Party before a
18 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
19 burden and expense of seeking protection in this court of its Protected Material.

20 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Protective Order, the
23 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,
25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
26 this Order, and (d) request such person or persons to execute the "Acknowledgment and
27 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 12. INADVERTENT PRODUCTION OF PRIVILEGED
2 OR OTHERWISE PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order that provides for production without prior privilege review. Pursuant to Federal Rule of
8 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
9 communication or information covered by the attorney-client privilege or work product
10 protection, the parties may incorporate their agreement in a stipulated protective order submitted
11 to the court.

12 13. MISCELLANEOUS

13 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the court in the future.

15 13.2 Right to Assert Other Objections. No Party waives any right it otherwise would
16 have to object to disclosing or producing any information or item on any ground not addressed in
17 this Protective Order. Similarly, no Party waives any right to object on any ground to use in
18 evidence of any of the material covered by this Protective Order.

19 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
20 laws and regulations relating to the export of technical data contained in such Protected Material,
21 including the release of such technical data to foreign persons or nationals in the United States or
22 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
23 data, and the Receiving Party shall take measures necessary to ensure compliance.

24 13.4 Filing Protected Material. Without written permission from the Designating Party
25 or a court order secured after appropriate notice to all interested persons, a Party may not file in
26 the public record in this action any Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
28 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at

1 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
2 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
3 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
4 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
5 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
6 79-5(e)(2) unless otherwise instructed by the court.

7 **14. FINAL DISPOSITION**

8 Within 60 days after the final disposition of this action, as defined in Section 4, each
9 Receiving Party must return all Protected Material to the Producing Party or destroy such
10 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
11 compilations, summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
13 submit a written certification to the Producing Party (and, if not the same person or entity, to the
14 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
15 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
16 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
19 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain Protected
21 Material. Any such archival copies that contain or constitute Protected Material remain subject to
22 this Protective Order as set forth in Section 4 (DURATION).

23 **15. Any violation of this Order may be punished by any and all appropriate measures
24 including, without limitations, contempt proceedings and/or monetary sanctions.**

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: October 28, 2019

4 By: /s/ Robert Katz

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13 Attorneys for Plaintiff
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Respectfully submitted,

By: /s/ John M. Hintz

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Attorneys for Defendant
FEIT ELECTRIC COMPANY, INC.

17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18 DATED: October 30, 2019

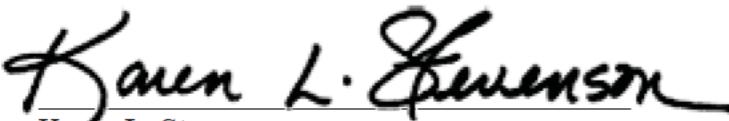

Karen L. Stevenson
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the Protective
6 Order that was issued by the United States District Court for the Central District of California on
7 _____, 2019 [date] in the case of *Lexington Luminance LLC v. Feit Electric Company, Inc.*, Case No. 2:18-cv-10513-PSG-KS. I agree to comply with and to be bound by all the terms
8 of this Protective Order, and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Protective Order to any
11 person or entity except in strict compliance with the provisions of this Order.
12

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcing the terms of this Protective Order,
15 even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or
18 type full address and telephone number] as my California agent for service of process in
19 connection with this action or any proceedings related to enforcement of this Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

24 || Printed name:

26 || Signature: